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ABROAD AT HOME

Baby and Bathwater

By Anthony Lewis

BOSTON, Jan. 27 — One of the solid reforms in American Government over the last few years has been the beginning of a system of accountability for intelligence operations. Congress, the President and the agencies themselves have worked together on controls to prevent any recurrence of abuses and rogue adventures.

Now the permanence of that reform is threatened. In official Washington's rush to respond to Soviet aggression, there is talk about "unshackling" the Central Intelligence Agency. President Carter, in his State of the Union address, said "we need to remove unwarranted restraints on our ability to collect intelligence." His intention was limited, but the Congressional response may not be.

Senator Daniel Patrick Moynihan, joined by six colleagues, last week introduced a bill that would make three changes desired by the intelligence agencies. The bill raises serious issues. But I believe all of them can be resolved so that the interests of intelligence and the principles of reform are both satisfied.

First, the Moynihan bill would repeal the Hughes-Ryan Amendment of 1974, which requires the C.I.A. to report to eight Congressional committees about its covert operations abroad. The agency would instead have to advise only the House and Senate Intelligence Committees — with a total of 29 members, compared to more than 200 on the committees now entitled to the information.

That change is a logical, indeed an inevitable one; with the two intelligence committees now in place and functioning well, there is no justification for the broader reporting requirement imposed before they were created. But the Hughes-Ryan provision should be repealed only as part of a permanent structure for regulation of the intelligence agencies: the so-called intelligence charter.

For the last two years, the agencies have been operating under an executive order issued by President Carter. He said he would seek a permanent charter in legislation, and the Senate committee has drafted one. But so far the White House has not reached final agreement on the legislation. And if a simple repeal of the Hughes-Ryan Amendment were to go through now, much of the political leverage for the charter would disappear.

Senator Moynihan indicated in a conversation that he hoped his bill would spur action on a charter. "Otherwise," he said, "the whole effort at regulation and reform will be lost, I guarantee you. No one will remember it. And you shouldn't let it all dissipate in institutional entropy."

One main issue on the proposed charter now divides the White House and some senators. The senators want a legal requirement that the intelligence committees be notified "prior to" any covert operation; the White House says the charter should require only "timely" notification. Under the executive order the committees in practice have been told before operations, and that practice would continue. But the White House, worried about contingencies, does not want it to be a rule of law.

When the issue first arose, a few years ago, it seemed to me that there was a case for the absolute rule of prior notification. Now it does not. The C.I.A. and the committees have a working relationship. The agency knows it can operate within that framework. And under the charter the committees would be able to deal with any official who unnecessarily delayed notifications.

Second, the Moynihan bill would virtually remove all intelligence agencies and files from the coverage of the Freedom of Information Act. The agencies would have to respond only to requests from individuals for information about themselves.

That sweeping exemption is included in the Senate committee's draft of a charter. The reason given for it by the C.I.A. is that some foreign intelligence services are reluctant to cooperate for fear that their material will be forced out in a Freedom of Information proceeding. But that problem can surely be handled without opening such a huge hole in the law.

The C.I.A. has met many information requests in the last few years without the slightest risk to security; in fact, it has a reputation for dealing fairly with such requests. I personally sought and obtained once-classified material used in closed hearings of the Pentagon Papers case in 1971. Why should such items, remote from today's intelligence secrets, be entirely exempted from the Freedom of Information Act?

Third, the Moynihan bill would make it a crime to disclose the identity of a secret U.S. intelligence agent. This section is aimed at Philip Agee, the turncoat former C.I.A. official who has made a business of naming agents. That is fair enough. But the language, very broadly drafted, would also threaten editors or reporters who "publish" stories long thought to have C.I.A. links — say Kermit Roosevelt's role in the 1953 coup in Iran.

In sum, the Moynihan bill responds to needs of the intelligence community. But those needs can be better met in a charter that assures continuing accountability and that takes care not to injure other important interests.

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